

**LOUDOUN COUNTY
MEMORANDUM**

DATE: June 1, 2005

TO: Board of Supervisors, Committee of the Whole

FROM: Melinda M. Artman, Zoning Administrator *mma*

RE: Nonconformities

Any change to an existing zoning ordinance that changes the types of uses and the bulk regulations of a lot (i.e. lot area, lot width, length-width ratio and access) may create some nonconforming uses, lots or structures. Section 1-400 of the Zoning Ordinance addresses these nonconforming situations by regulating and limiting the development and continued existence of these uses and structures, curtailing substantial investment until "eventual improvement to a conforming status" in these nonconforming uses and structures while allowing them to continue to exist and be maintained.

The Board has expressed concerns regarding nonconforming lots within the areas formerly zoned AR-1 and AR-2. In AR-1 there are 10,522 lots that are less than 20 acres in size and these lots comprise 39% of the land area within AR-1. In AR-2 there are 1851 lots less than 50 acres in size and these lots comprise 30% of the total land area in AR-2. Within these two zoning districts these lots were considered nonconforming. (Attachment 1: All Parcels in the Rural Policy Area by Zoning and Parcel Size.)

Section 1-404 of the Zoning Ordinance addresses nonconforming lots and provides that such a lot may be used for any permitted (or special exception) use in the underlying zoning district even though the lot does not meet lot width, lot area or access requirements. Such lot must meet all other zoning ordinance requirements to include minimum required yards (setbacks). Both the AR districts used the minimum required yards of the A-3 district to minimize the impact of the change in zoning district. **The only restriction on a nonconforming lot is that it can not be further subdivided.**

Section 1-400 also addresses nonconforming uses. Generally speaking, nonconforming uses enjoy the ability to continue operation and to make repairs to any structure associated with that use. The use is not permitted to expand or extend beyond the floor area it occupied on the day the Ordinance was adopted. The following offers a scenario by which a use becomes nonconforming: an apartment house was built in 1953. The applicable Zoning Ordinance and map in effect at that time was adopted in 1945. The zoning district allowed

“residences” and did not specify the type of house. With the June 1993 remapping the property was mapped CR-2, which is a district that only permits single family detached residences. The apartment house becomes a nonconforming use. Another example: a convenience store with two gas pumps is established at a rural crossroads in 1960. It is subsequently mapped A-3 where the use is not permitted. The store becomes a nonconforming use.

The Zoning Ordinance has generous provisions regarding nonconforming uses, allowing nonconforming residences the opportunity to expand 50% of its existing square footage as long as it meets the setbacks in effect at the time the original house was built. Further, Section 1-405 allows the nonconforming use status to be extinguished upon approval of a special exception from the Board of Supervisors. During the remapping process, the Board heard testimony that nonconforming residences (i.e. a residence in an industrial or other non-residential district) will not be able to obtain financing to facilitate the sale of said homes. Staff was able to corroborate this testimony with a national mortgage lender. However, the portion of Loudoun Valley Estates that is within the PD-GI zoning district does not seem to have any difficulty selling the newly built homes along Route 606. There is no indication of financing difficulty with nonconforming lots.

ISSUES:

Does the Board wish to create zoning districts that minimizes nonconforming uses?

ATTACHMENTS:

1. All Parcels in the Rural Policy Area by Zoning and Parcel Size
2. Description of nonconformities provided to the Board of Supervisors on 11/02 and a summary of overview discussions on nonconforming lots/uses 11/02.

All Parcels in the Rural Policy Area by Zoning and Parcel Size

Parcel Size (Acres)	Data	Primary Zoning		Grand Total
		AR1	AR2	
< 0.25	Number of Parcels	119	23	142
	Total Acres	15	4	19
0.25 to 0.99	Number of Parcels	888	103	991
	Total Acres	605	62	667
1.00 to 1.99	Number of Parcels	1,012	111	1,123
	Total Acres	1,331	149	1,480
2.00 to 4.99	Number of Parcels	4,138	400	4,538
	Total Acres	13,968	1,356	15,324
5.00 to 9.99	Number of Parcels	1,734	310	2,044
	Total Acres	11,556	2,110	13,666
10.00 to 14.99	Number of Parcels	2,171	468	2,639
	Total Acres	24,218	5,288	29,506
15.00 to 19.99	Number of Parcels	460	126	586
	Total Acres	7,802	2,179	9,981
20.00 to 24.99	Number of Parcels	345	101	446
	Total Acres	7,604	2,222	9,826
25.00 to 49.99	Number of Parcels	638	209	847
	Total Acres	21,402	7,088	28,490
50.00 to 99.99	Number of Parcels	290	162	452
	Total Acres	19,551	11,434	30,984
100.00 to 499.99	Number of Parcels	239	147	386
	Total Acres	43,025	29,214	72,239
500.00 to 999.99	Number of Parcels	4	5	9
	Total Acres	2,980	3,049	6,029
1000.00+	Number of Parcels	-	2	2
	Total Acres	-	2,139	2,139
Total	Number of Parcels	12,038	2,167	14,205
	Total Acres	154,057	66,294	220,350
Nonconforming	Number of Parcels	10,522	1,851	12,373
	Total Acres	59,495	20,458	79,952

Attachment 2 – Description of Nonconformities

Board of Supervisors Work Session Countywide Remapping Initiative

November 9, 2002

NONCONFORMING LOT: A legally recorded lot that met all of the requirements of the Zoning Ordinance and Subdivision Ordinance at the time it was created. Such lot, by reason of revision or amendment of the Zoning Ordinance or enactment of a new Zoning Ordinance, no longer meets the requirements of the current Zoning Ordinance. The only zoning requirements that affect a lot at time of creation are the area of the lot (minimum lot area), how wide the lot is (minimum lot width), the dimensions of the lot (lot-width ratio) and the location of the lot. Even though the lots do not meet these requirements, they are allowed to develop with any permitted or special exception use so long as every other requirement of the Zoning Ordinance are met (such as minimum required yards, setbacks, parking, landscaping, signage, lot coverage and use limitations or performance standards).

NONCONFORMING STRUCTURES/BUILDINGS: Structures or buildings that met the requirements of the Zoning Ordinance at the time they were built. Such structures or buildings no longer meet the requirements of the Zoning Ordinance by reason of revision or amendment of the Zoning Ordinance or enactment of a new Zoning Ordinance. The provisions of the zoning ordinance that affect a structure or building are its placement on the lot (minimum required yards, setbacks, distance between buildings and lot coverage) and its size (building height and sometimes building area). Nonconforming structures/buildings are typically permitted to expand so long as the expansion meets the requirements of the current ordinance or meets certain, specified criteria for expansion (such as allowing expansion because of a setback imposed by Section 5-900).

NONCONFORMING USE: A legally established use or activity under the provisions of the Zoning Ordinance at the time the use was established. Proof of establishment may include zoning permit, occupancy permit, approved site plan, aerial photographs, or other similar documentation. Such use or activity no longer meets the current provisions of the zoning ordinance because of a revision or amendment or an enactment of a new Zoning Ordinance. Such use or activity enjoys the right to remain and operate in exactly the same manner as it did when it was established. Typically the use must remain in continuous operation to enjoy this right. Most ordinances make arrangements to reestablish the use if some calamity occurs (such as a fire or tornado) within a specified period of time. Good zoning practice requires that the use ultimately go away although it is allowed to remain and be maintained; however structural alterations and expansions are typically not permitted. It is noted that Loudoun County is more generous than this by allowing structural alterations and making provisions by which the use may expand. Why does good zoning practice require that the use ultimately go away? The objective is to eventually have a conforming use.